IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
UNITED STATES OF AMERICA

United States of America,
Ex Rel. Dale Thomas Vosika
and Rob Thompson,

Plaintiffs,

vs.

Starkey Laboratories, Inc.,

Defendant.

RELATORS' MEMORANDUM OF LAW

Court File No. 01-709 DWF/SRN

Relators filed an original Complaint in this matter on April 24, 2001. That Complaint remains under seal in accordance with the Court's Order of June 23, 2003.

In Defendant's Memorandum in Support of Motion for Dismissal With Prejudice of the Second Amended Complaint and Renewed Motion Regarding Statute of Limitations dated June 8, 2004, Defendant makes the following statement at footnote #2 on page 2 of the memorandum:

> Relators have failed to seek unsealing of the original complaint which is essential to Starkey's renewed motion under the FCA's statute of limitations. If relators seek to argue the relation-back doctrine, they must present that Complaint on the record.

Relators are asking the Court to amends its June 23, 2003 Order to permit the Complaint dated April 24, 2001 to be unsealed and served upon Defendant.

ARGUMENT

Rule 15(c) of the Federal Rules of Civil Procedure provides in pertinent part, as follows:

An amendment of pleadings relates back to the day of the original pleading when…the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

Because the original Complaint is highly relevant to the application of any statute of limitations, the Relators request that the Court amend its Order of June 23, 2003 to allow the original Complaint in this matter to be unsealed and served upon Defendant.

WARCHOL, BERNDT & HAJEK, P.A.

Dated: June 23, 2004

s/ Robert J. Hajek

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